

ESTTA Tracking number: **ESTTA420007**

Filing date: **07/15/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91200153
Party	Defendant Mango's Tropical Cafe, Inc.
Correspondence Address	DAVID K FRIEDLAND FRIEDLAND & VINING PA 7301 SW 57 COURT SUITE 515 SOUTH MIAMI, FL 33143 UNITED STATES david.friedland@friedlandvining.com, faime.vining@friedlandvining.com
Submission	Answer and Counterclaim
Filer's Name	David K. Friedland
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Signature	/David K. Friedland/
Date	07/15/2011
Attachments	Applicant's Answer to Notice of Opposition, Aff Defenses & Counterclaim.pdf ( 4 pages )(109838 bytes )

### Registrations Subject to the filing

Registration No	1200278	Registration date	07/06/1982
Registrant	UMG RECORDINGS INC 100 UNIVERSAL CITY PLAZA UNIVERSAL CITY, CA 91608 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

### Goods/Services Subject to the filing

Class 009. First Use: 1980/08/01 First Use In Commerce: 1980/08/01 All goods and services in the class are requested, namely: [Phonograph Records and] Prerecorded Audio Tapes
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Registration No	1749894	Registration date	02/02/1993
Registrant	UNIVERSAL INTERNATIONAL MUSIC B.V. 2220 Colorado Avenue Santa Monica, CA 90404 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

### Goods/Services Subject to the filing

Class 009. First Use: 1989/09/00 First Use In Commerce: 1990/01/00 All goods and services in the class are requested, namely: musical sound recordings and [ musical video recordings ]
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**Universal International Music B.V.,**  
Opposer,

v.

**Mango's Tropical Cafe, Inc.,**  
Applicant.

Opposition No.: 91200153  
Application Serial No.: 85/069,828

Date of Publication: December 7, 2010  
Mark: **MANGO'S TROPICAL CAFE  
AND DESIGN**



**APPLICANT'S ANSWER TO NOTICE OF OPPOSITION, AFFIRMATIVE DEFENSES,  
AND COUNTERCLAIM**

Applicant, Mango's Tropical Cafe, Inc. ("Applicant"), by its attorneys, hereby answers the numbered paragraphs of the Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first numbered paragraph and they are therefore denied.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second numbered paragraph and they are therefore denied.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the third numbered paragraph and they are therefore denied.
4. Applicant admits that TARR printouts are attached to the Notice of Opposition as Exhibit 1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the fourth numbered paragraph and they are therefore denied.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the fifth numbered paragraph and they are therefore denied.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the sixth numbered paragraph and they are therefore denied.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the seventh numbered paragraph and they are therefore denied.

8. Applicant admits that on June 23, 2010 it filed U.S. Application Serial Number 85/069,828 (the "Application"). Applicant admits that the identification of goods in the Application reads as follows: "DVDs featuring music and live entertainment" in Class 9. Applicant admits that the filing basis for the Application was intent-to-use. Applicant denies the remaining allegations of the eighth numbered paragraph.

9. Applicant admits that the Application was published for opposition on December 7, 2010 and that the extended deadline to oppose the Application expired on June 6, 2011. Applicant denies the remaining allegations of the ninth numbered paragraph.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the tenth numbered paragraph and they are therefore denied.

11. Applicant denies the allegations of the eleventh numbered paragraph.

12. Applicant denies the allegations of the twelfth numbered paragraph.

13. Applicant denies the allegations of the thirteenth numbered paragraph.

14. Applicant denies the allegations of the fourteenth numbered paragraph.

15. Applicant denies the allegations of the fifteenth numbered paragraph.

16. Applicant denies the allegations of the sixteenth numbered paragraph.

17. Applicant denies the allegations of the seventeenth numbered paragraph.
18. Applicant denies the allegations of the eighteenth numbered paragraph.
19. Applicant denies the allegations of the nineteenth numbered paragraph.

**AFFIRMATIVE DEFENSES**

1. The Notice of Opposition fails to state a claim upon which relief can be granted.
2. Upon information and belief, Opposer has not been and will not be damaged by the registration of the mark **MANGO'S TROPICAL CAFE and Design**.
3. Upon information and belief, Opposer has not established that it has standing to maintain its claims against Applicant.
4. Upon information and belief, Opposer has abandoned its rights to Registration No. 1,200,278 and Registration No. 1,749,894 upon which it relies in this proceeding.

**COUNTERCLAIM FOR CANCELLATION**

Applicant states the following counterclaim for cancellation of Registration No. 1,200,278 for MANGO and Registration No. 1,749,894 for MANGO and Design (the "MANGO Marks"):

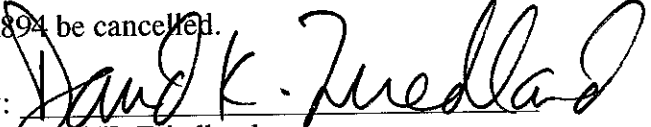
1. In this proceeding, Opposer has asserted ownership of the MANGO Marks as a basis for its opposition to the Application. Applicant is therefore being damaged by the continued presence of these registrations on the Principal Register.
2. On information and belief, Opposer has abandoned its rights to the MANGO Marks by publicly discontinuing the use of those marks with an intent not to resume the marks' use. The continued registration of Opposer's MANGO Marks is therefore inconsistent with 15 U.S.C. § 1064.

3. The required fee in the amount of \$300.00 per registration accompanies this petition.

WHEREFORE, Applicant Mango's Tropical Cafe, Inc. prays that this Opposition be dismissed with prejudice, that the registration of the mark shown in the Application be granted, and that Registrations No. 1,200,278 and 1,749,894 be cancelled.

Date: July 18, 2011

By:

  
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Jaime Rich Vining  
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Attorneys for Applicant  
MANGO'S TROPICAL CAFE, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Applicant's Answer, Affirmative Defenses, and Counterclaim has been duly served by emailing such copy, per agreement of counsel for the parties, to counsel for Opposer, as follows:

Brent S. LaBarge – brent.labarge@umusic.com

DeAnne H. Ozaki – Deanne.ozaki@umusic.com

  
David K. Friedland